

Application No.: 10/712,529

Case No.: 59388US002

REMARKS

Claims 1-5, 7-13, 15, 16, and 18-24 are pending.

Double Patenting

Claims 1-5, 7-13, 15, 16, and 18-24 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over certain claims of copending Application No. 10/325,410. Application No. 10/325,410 is now abandoned rendering this provisional rejection moot. Applicants respectfully request that the provisional double patenting rejection of claims 1-5, 7-13, 15, 16, and 18-24 be withdrawn.

§ 103 Rejections

Claims 1-5, 10-13, 15, 16, and 18-24 stand rejected under 35 USC § 103(a) as purportedly being unpatentable over Sheth (US 4,929,303) in view of Avellanet (US 5,134,831).

Independent claim 1 requires, *inter alia*, “a fluid control film comprising a first side and a second side, the first side comprising a polymeric sheet having a microstructured surface with a plurality of channels.” Applicants respectfully submit that the Patent Office has failed to show how the cited references describe such a film. For at least these reasons, the rejection under 35 USC 103(a) is unwarranted and should be withdrawn.

A fluid control film “refers to a film or sheet or layer having at least one major surface comprising a microreplicated pattern capable of manipulating, guiding, containing, spontaneously wicking, transporting, or controlling, a fluid.” (See U.S. Patent No. 6,531,206 at col. 6, lines 53-56, which was incorporated by reference in the present application at page 4, lines 8-10.) According to the Patent Office, Sheth discloses a house wrap. Specifically, Sheth purportedly relates to “breathable composites, and more particularly, relates to breathable house wrap composites with good breathability and improved strength and other properties.” (See, e.g., col. 2, lines 40-50.) Applicants respectfully submit that the fluid control films of the present invention are patentably distinct from breathable house wraps, and that the Patent Office has failed to show how Sheth describes, teaches, or suggests a fluid control film.

Application No.: 10/712,529

Case No.: 59388US002

The Patent Office asserts that the house wrap of Sheth can have microreplicated channels thereon. However, the text of Sheth cited by the Patent Office fails to describe, teach, or suggest channels, much less channels "capable of manipulating, guiding, containing, spontaneously wicking, transporting, or controlling, a fluid," such that the film would be a fluid control film. At best, the passages cited by the Patent Office disclose embossing on the surface of polyolefin films "to reduce gloss." (Col. 5, lines 18-19.) According to Sheth, the embossing can be conducted with "any micro/macro pattern, e.g., cross-hatching, dots, lines, circles, diamonds, hexagons, etc." (See, col. 5, lines 23-27.) Applicants respectfully submit that this passage fails to describe channels. In addition, Sheth fails to provide any motivation for selecting a particular pattern, or for modifying the identified patterns for any purpose other than reducing gloss.

In summary, Applicants respectfully submit that the Patent Office has failed to show how Sheth describes, teaches or suggests channels. In addition, the Patent Office has failed to show how Sheth describes, teaches or suggests a fluid control film. Avellanet was cited for its purported description of house wraps being applied over the entire house, including frames, door and window openings, and the roof. (See Office Action mailed January 3, 2006; ¶ 4.) Applicants respectfully submit that the Patent Office has failed to show how Avellanet overcomes the deficiencies of Sheth, as described above. For at least these reasons, the rejection of independent claim 1 under 35 USC § 103(a) as being unpatentable over Sheth in view of Avellanet is unwarranted and should be withdrawn.

Claims 2-5, 10-13, 15, 16, and 18-22 each add additional features to claim 1. Claim 1 is patentable for the reasons given above. Thus, claims 2-5, 10-13, 15, 16, and 18-22 are likewise be patentable.

Independent claim 23 provides a method of controlling fluid in a wall assembly. The method requires, *inter alia*, providing a fluid control film, the fluid control film comprising a first side and a second side, the first side comprising a polymeric sheet having a microstructured surface with a plurality of channels. As described above, the Patent Office has failed to show how the cited references describe, teach, or suggest such a fluid control film. Claim 24 depends from claim 23 and adds patentable features thereto. For at least these reasons, the rejection of claims 23 and 24 under 35 USC § 103(a) as being unpatentable over Sheth in view of Avellanet is unwarranted and should be withdrawn.

Application No.: 10/712,529

Case No.: 59388US002

In summary, the rejection of claims 1-5, 10-13, 15, 16, and 18-24 under 35 USC § 103(a) as being unpatentable over Sheth (US 4,929,303) in view of Avellanet (US 5,134,831) is unwarranted and should be withdrawn.

Claims 7-9 stand rejected under 35 USC § 103(a) as purportedly being unpatentable over Sheth in view of Avellanet, and further in view of Reicherts et al. (US 6,410,118).

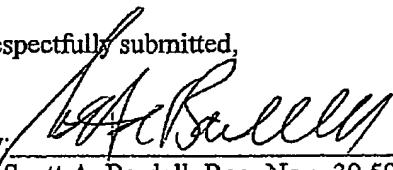
Claims 7-9 depend from claim 1 and add patentable features thereto. Claim 1 is patentable over Sheth in view of Avellanet for at least the reasons stated above. Reicherts et al. was cited for its purported disclosure of the use of adhesives to apply barriers to houses. (See Office Action mailed January 3, 2006; ¶ 5.) Applicants respectfully submit that the Patent Office has failed to show how Reicherts et al. overcome the deficiencies of Sheth and Avellanet. For at least this reason, the rejection of claims 7-9 under 35 USC § 103(a) as purportedly being unpatentable over Sheth in view of Avellanet, and further in view of Reicherts et al. (US 6,410,118) is unwarranted and should be withdrawn.

In view of the above, it is submitted that the application is in condition for allowance. Reconsideration of the application is requested, and allowance of claims 1-5, 7-13, 15, 16, and 18-24 at an early date is solicited.

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Respectfully submitted,

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